THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 19625 of 2005

Dated: 20.11.2006

Between:

The Depot Manager, A.P.S.R.T.C., Karimnagar-II Depot and another.

....
PETITIONERS

AND

D. Govinda Rao and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 19625 of 2005

Order:

Questioning the award, dated 28.12.2004 passed by the Labour Court, Godavarikhani, in I.D. No. 179 of 2003, the petitioners-Corporation filed the present writ petition.

2. The 1st respondent, while working as Conductor with the petitioners-Corporation was removed from service on 31.07.1995 on certain cash and ticket irregularities. Against the said removal order, the 1st respondent preferred appeal, which was rejected. Thereafter, he filed review petition, and the 2nd petitioner having considered the same, directed reinstatement of the 1st respondent into service as Conductor, by modifying the punishment of removal from service to that of reducing his pay by two incremental stages with cumulative effect, treating the period of absence i.e., from the date of removal till the date of joining as 'not on duty'. Challenging the said punishment, the 1st respondent raised an industrial dispute in I.D. No. 179 of 2003, and the Labour Court, Godavarikhani, by award dated 28.12.2004, set aside the order passed by the review authority and restored the increments of the 1st respondent, by confirming the order of treating the period

of absence i.e., from the date of removal till the date of joining as 'not on duty'. Aggrieved by the said award, the petitioners-Corporation filed the present writ petition.

3. The main contention of the learned Standing Counsel for the petitioners-Corporation is that against the review order, which imposed a lesser punishment of deferment of annual increment, an application under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act') is not maintainable, and the Tribunal committed an error entertaining the said application and setting aside the lesser punishment of deferment of annual increment, imposed by the reviewing authority while setting aside the order of removal, and in support of this contention, he placed reliance on a judgment of the Division Bench of this Court in ***B. VIDYASAGAR v. DEPOT MANAGER, APSRTC, KARIMNAGAR***[1]***.***

4. On the other hand, learned Counsel appearing on behalf of the 1st respondent-workman vehemently opposed the said contention and submitted that any dispute or difference between the workman and his employer on the orders passed in appeal or review, arising out of dismissal or termination, though modified, shall be deemed to be an industrial dispute, and for resolution of such dispute, an application filed under Section 2-A(2) of the Act, is maintainable. He further submits that the Labour Court, after careful consideration of the entire evidence available on record together with the explanation submitted by the 1st respondent, has passed the impugned order, hence, there are no reasons to interfere with the same.

5. Heard the learned Standing Counsel for the petitioners-Corporation and the learned counsel for the 1st respondent-workman.

6. In ***B. VIDYASAGAR v. DEPOT MANAGER, APSRTC, KARIMNAGAR*** (1 Supra), a Division Bench of this Court held that where punishment of removal from service passed by the disciplinary authority, is modified to a lesser punishment by the appellate authority or reviewing authority, then the workman cannot invoke the provisions of Section 2-A(2) of the Act and question the lesser punishment. In the instant case, admittedly, the punishment of removal imposed by the disciplinary authority, though confirmed by the appellate authority, was modified by the reviewing authority, by setting aside the removal order and imposing lesser punishment of deferment of annual increments for a period of two years, and having regard to the judgment referred to above, the application filed by the petitioner questioning the lesser punishment, passed by the reviewing authority, by raising an industrial dispute under
Section 2-A(2) of the Act, was not maintainable, and the Labour Court committed an error in entertaining the same and granting the relief as prayed for by the 1st respondent-workman.

7. In that view of the matter, the writ petition is allowed. The award of the Labour Court dated 29.12.2004 passed in I.D.No.179 of 2003, is set aside. However, the 1st respondent-workman is at liberty to avail the remedies available to him under law against the

order passed by the reviewing authority imposing lesser punishment. No costs.

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N.V. RAMANA, J.

Date: 20.11.2006

sj/ksr

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[1] 2006(4) ALT 280 (D.B)